



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/43UK/LBC/2018/0004**

**Property** : **Flat 7 Newstead House,  
Markfield Road  
Caterham, Surrey, CR3 6RN**

**Applicant** : **Robert Spalding**

**Representative** : **In person**

**Respondent** : **Grayson Clarke**

**Representative** : **In person**

**Type of Application** : **Section 168, CLRA02**

**Tribunal Members** : **Judge D Dovar  
Miss C D Barton BSc MRICS**

**Date and venue of  
Hearing** : **17<sup>th</sup> April 2018, Crawley**

**Date of Decision** : **18<sup>th</sup> April 2018**

---

**DECISION**

---

1. This an application for the determination of breach of covenant under s.168 of the Commonhold and Leasehold Reform Act 2002.
2. The covenant in question is contained in a lease of the Property dated 13<sup>th</sup> December 1967. By clause 2, the tenant covenants to observe the restrictions in the First Schedule. The First Schedule includes the following restriction:

*'no dog or other animal shall be kept in the flat which may cause annoyance to any owner lessee or occupier of the other flats comprised in the Mansion.'*
3. The conduct in question relates to the dog in the Property, Bobo, who is owned by the occupants, Sam McDouall and Amanda Tapp. They rent the Property from Mr and Mrs Clarke who are the long leaseholders. In particular the allegations of breach centre on fouling by Bobo of the lawn area immediately outside one of the communal doors at the front of the block and adjacent to a share access pathway.
4. Neither party submitted any witness statements. A bundle was prepared and agreed which included various correspondence on the issue, notably from the neighbouring occupiers, Mr Chambers who lived in the flat opposite the Property and Mr Shipton who lived above it.
5. The Tribunal inspected the Property on the morning of the hearing accompanied by the parties.

6. Newstead House is built in a cul de sac at the southern end of Markfield Road. It is in a well-established residential area relatively convenient for local facilities in Caterham town centre and near to open countryside.
7. There is a communal surfaced parking area for several cars to the front and a garage block. There are also communal gardens to the front and rear mainly laid to lawns with areas of semi mature trees and shrubs.
8. The block is purpose built of conventional construction and believed built during the late 1960s, approximately. It comprises 3 storeys and 12 flats accessible on foot from the front via two separate secure entrance doorways approached by paved pathways from the parking area. The Property is on the ground floor.
9. Mr Spalding clarified that the conduct was both the fouling and urinating on the area immediately outside the Property. A photograph of grass staining had been provided and there was evidence of the same on the inspection.
10. He contended that in December 2016 he began to get complaints from other occupiers that Bobo was allowed to roam free on the grass at the front and would urinate and leave a mess. He said that despite his requests for this to stop, it had not.
11. He accepted that there was at least one other dog in the building, belonging to Mr Chambers.
12. He contended that the fouling has caused annoyance, both the leaving of faeces and the discolouration of the grass through urination. He pointed

out that the management (and therefore the leaseholders) had spent money on making the grass look nice, but there were now brown patches. He said it might sound petty, but he saw no reason why Bobo could not be taken to neighbouring areas to urinate.

13. In response Mr Clarke considered the entire application trivial and nonsensical. He did however admit that there was an initial problem with fouling in the immediate vicinity of the Property and that that had caused some brown patches a year or more ago. However, since then he considered matters had escalated to a ridiculous level which had been spurred on by a falling out between his tenant and Mr Shipton. He also challenged whether any current complaints could be linked to Bobo.
14. He also suggested that even if dog faeces had been left on the grass, if that was only on a few occasions then it would not be an 'annoyance'. He considered it would need to be more persistent than that. In relation to the discolouration of the lawn he did not consider the scale of discolouration was sufficient to amount to an 'annoyance'. Whilst he conceded the lawn was well kept and maintained, he contended it was not 'Lord's cricket ground' and the grass was not perfect. He also contended that whilst there was discolouration from what 'may' have happened a year or more ago, any decent gardener would have made good that discolouration by now.
15. In terms of considering 'annoyance' he contended that there had been no avalanche of complaints. There was only evidence of two complaints and one was from Mr Shipton who bore a grudge. He submitted that the

numbers complaining gave an indication as to whether or not the conduct was an 'annoyance'.

16. The Tribunal noted the admission that there had historically been discolouration from urination and faeces left on the grass outside the door. In the Tribunal's view both gave rise to a breach of the covenant. Both had the potential to cause an annoyance to a person of normal sensibility. There was no need for a multitude of complainants, the covenant could be satisfied if the conduct could cause annoyance to a reasonably minded occupier. That Mr Chambers, who had no axe to grind, was clearly annoyed at the faeces and discolouration was support for this finding. He was also the most proximate occupier to the Property. Mr Clarke's dismissive approach to the application failed to recognise the fact that the conduct complained would be annoying to any reasonably minded occupier of the building. Mr Chambers was understandably annoyed not just by faeces being left outside the communal door, but by the discolouration of what was otherwise a well kept and obviously cared for lawn.
17. The Tribunal considered that overall the building and grounds were well maintained and that part of the function of the restrictions in the lease was to ensure that the area was kept well for all the occupiers.
18. For those reasons the Tribunal considers that a breach has occurred and the application succeeds to that extent.
19. The evidence as to whether the breach was continuing was far less clear.

It appears that the occupiers of the Property had taken steps to try and address some concerns. However, it seems that they may have not gone far

enough. It was not clear whether they had taken steps to ensure that Bobo does not foul (whether by defecating or urinating) the area outside the communal door. Mr Spalding was correct in contending that it would not take much to ensure that Bobo was taken away from the entrance at these times; i.e. to walk Bobo to any neighbouring hardcore surface and drain for urination and to clear up any faeces. If that was adhered to, then the Tribunal does not consider that Bobo would fall within the covenant insofar as being a dog which may cause annoyance to other occupiers.

20. This application is a prelude to the service of a section 146 notice (under the Law of Property Act 1925) which itself is a prelude to forfeiture. Whilst the Tribunal has made a determination of breach, if the Applicant were to serve an effective s.146 notice and ultimately forfeit it could only do so if it could establish sufficient evidence that the conduct complained of was continuing.
21. Therefore although the Tribunal has determined that there has been a breach, it does not need to and cannot on the present evidence determine whether that breach is continuing.



Judge D Dovar

### **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.